

立法會
Legislative Council

LC Paper No. CB(1)2184/02-03
(These minutes have been seen
by the Administration)

Ref : CB1/BC/3/02

Bills Committee on Land Titles Bill

**Minutes of eighth meeting held on
Thursday, 19 June 2003, at 2:30 pm
in Conference Room A of the Legislative Council Building**

- Members present** : Hon Margaret NG (Chairman)
Hon Andrew WONG Wang-fat, JP
Hon Miriam LAU Kin-yee, JP
Hon TAM Yiu-chung, GBS, JP
Hon Abraham SHEK Lai-him, JP
Hon Albert CHAN Wai-yip
Hon IP Kwok-him, JP
Hon LAU Ping-cheung
Hon Audrey EU Yuet-mee, SC, JP
- Members absent** : Hon Albert HO Chun-yan (Deputy Chairman)
Dr Hon TANG Siu-tong, JP
Hon WONG Sing-chi
- Public officers attending** : Mr Kim SALKELD
Land Registrar
- Mr Parrish NG
Principal Assistant Secretary for Housing, Planning
and Lands (Planning and Lands) 3
- Mr Geoffrey FOX
Senior Assistant Law Draftsman
Department of Justice

Ms Monica LO
Senior Solicitor/Title Registration
Land Registry

Mrs Alice LEE
Registry Manager
Land Registry

Ms Rayne CHAI
Government Counsel
Department of Justice

Mr Denis LI
Assistant Secretary (Buildings) 3
Housing, Planning and Lands Bureau

Clerk in attendance : Miss Salumi CHAN
Chief Assistant Secretary (1)5

Staff in attendance : Mr KAU Kin-wah
Assistant Legal Adviser 6

Ms Sarah YUEN
Senior Assistant Secretary (1)6

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- I. Confirmation of minutes of meeting**
(LC Paper No. CB(1)2009/02-03 — Minutes of seventh meeting held
on 9 June 2003)

The minutes of the meeting held on 9 June 2003 were confirmed.

II. Meeting with the Administration

- (LC Paper No. CB(1)1464/02-03(01) — “Follow-up to the second meeting on 8 April 2003” prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)1567/02-03(01) — “Follow-up to the third meeting on 23 April 2003” prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)1724/02-03(01) — “Follow-up to the fourth meeting on 5 May 2003” prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)1986/02-03(01) — “Follow-up to the seventh meeting on 9 June 2003” prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)2016/02-03(01) — Paper provided by the Administration on “Comparison of Procedures — Supplementary information”
- LC Paper No. CB(1)1986/02-03(02) — Paper provided by the Administration on “The Conversion Mechanism — Supplementary information”
- LC Paper No. CB(1)1986/02-03(03) — Paper provided by the Administration on “Title Certificates, Searches and Instruments”
- LC Paper No. CB(1)1986/02-03(04) — Paper provided by the Administration on “Dispositions, Transmissions and Trusts”)

2. The revised version of the paper on “The Conversion Mechanism — Supplementary information” (LC Paper No. CB(1)1986/02-03(02)) was tabled at the meeting. The Chairman drew members’ attention to the typographical errors in paragraphs 6(a) and 6(b) of the paper so revised.

(Post-meeting note: The revised version of the paper was issued to members vide LC Paper No. CB(1)2043/02-03 on 20 June 2003.)

3. The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

Follow-up actions to be taken by the Administration

- Admin 4. At the request of the Bills Committee, the Administration agreed to take the following actions -

- (a) To provide, before the ninth Bills Committee meeting on 30 June 2003 as far as practicable, a response to the paper to be prepared by the Assistant Legal Adviser about the applicability of the doctrine of notice under the Bill, in particular on the following points:
- According to the Administration, the position under the Bill was that if upon an assignment for value of registered land, any unregistered equitable interests would not be enforceable against the land even if the purchaser concerned had knowledge of such interests. Members were concerned:
 - (i) whether this policy was proper;
 - (ii) what effect this policy would have on the interests of the persons; and
 - (iii) whether the policy was reflected in the Bill.
- (b) To provide a paper on the “Deeds of mutual covenant” (DMC) to cover the following:
- (i) To list the different easements, rights or covenants provided for in a DMC and state which of them would be registered from the date of registration of the DMC. In so doing, the Administration was requested to use two or three standard DMCs from different decades as examples to illustrate the types of easements, rights or covenants that usually appeared in a DMC; and
 - (ii) To provide, after discussion with Hon Audrey EU Yuet-mee, clarifications on the details of clause 51, in particular, the purpose of clause 51(4) and whether the registration of a DMC would effect the registration of only those easements, rights or covenants provided for in the deed which would affect the registered land or the registered long term lease, the subject of the deed.
- (c) To ensure that the Bill, in particular clause 12(2), and the proposed new section 23B of the Land Registration Ordinance (Cap. 128) would be amended to reflect the policy that in the event that a certificate of good title could not be issued in respect of a property, there would be no need to apply for a first registration of the property.

- (d) To report in due course how the English version of “首次轉讓” (first assignment) in the Bill would be revised to reflect the meaning of the Chinese version.

- (e) To provide a paper to report on the Administration's consideration of the following issues in relation to the policy on dispositions -
 - (i) Whether the Bill reflected the policy that any disposition of registered land would without exception only have legal effect when it was registered; and
 - (ii) Whether clause 29(1) needed to be amended to the effect that for the purpose of creating, extinguishing, transferring, varying or affecting any interest in or over registered land or a registered long term lease the disposition of which was not required to be registered under the Bill, no registration was necessary to effect such creation, extinguishment, transfer, variation or affection.

Follow-up action to be taken by the Assistant Legal Adviser

- ALA6 5. At the request of the Bills Committee, Assistant Legal Adviser 6 agreed to prepare the paper mentioned in paragraph 4(a) above.

Date of next meeting

6. The Chairman reminded members that the next meeting of the Bills Committee would be held on Monday, 30 June 2003, at 10:45 am.
7. The Chairman urged the Administration to provide for the Bills Committee's consideration by the end of July papers to address the outstanding issues in the respective "lists of follow-up actions to be taken by the Administration" after each meeting of the Bills Committee.

III. Any other business

8. There being no other business, the meeting ended at 4:20 pm.

Council Business Division 1
Legislative Council Secretariat
8 July 2003

Appendix

**Proceedings of the eighth meeting of the
Bills Committee on Land Titles Bill
on Thursday, 19 June 2003, at 2:30 pm
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-000016	Chairman	Confirmation of minutes of the meeting held on 9 June 2003	
000017-000216	Chairman	Opening remarks	
<i>Part A: Matters arising from the second, third and fourth meetings</i>			
000217-000744	Administration	Briefing by the Administration on the paper on “Comparison of Procedures – Supplementary information” (LC Paper No. CB(1)2016/02-03(01))	
000745-000852	Chairman Administration	Role of the Land Registry in conveyancing transactions after enactment of the Bill	
000853-001510	Chairman Mr TAM Yiu-chung Administration	(a) Compulsory registration under the proposed land title registration system (LTRS) with regard to new transactions and the implications thereof on properties which could not be so registered because of the inability to obtain a certificate of good title	

Time marker	Speaker	Subject(s)	Action Required
		(b) Options for the properties referred to in (a) above to remain in the existing deeds registration system or to voluntarily seek registration under the proposed LTRS again when the obstacles to the issue of a certificate of good title therefor were cleared	
001511-002256	Chairman Mr Albert CHAN Administration	(a) Whether upon agreement between the purchaser and the vendor, a property might be allowed not to register under the proposed LTRS upon the first assignment (b) Arguments for and against compulsory registration under the proposed LTRS with regard to new transactions, namely, benefits so arising such as enhanced certainty and protection of title versus the freedom of choice	
002257-002800	Chairman Administration	Whether there was a need to apply for a first registration of land if a certificate of good title could not be issued (clause 12 and the proposed new sections 23(1A) and 23B of the Land Registration Ordinance (Cap. 128))	

Time marker	Speaker	Subject(s)	Action Required
002801-003140	Chairman Mr Abraham SHEK Administration	Arguments for and against the availability of enhanced protection under the proposed LTRS, namely, enhanced protection for the innocent former owner versus concern about the implications of the proposed cap on the indemnity on owners of high-value properties	
003141-003752	Chairman Ms Audrey EU Administration	Need to ensure that the Bill, in particular clause 12(2), and the proposed new section 23B of the Land Registration Ordinance (Cap. 128) would be amended to reflect the policy that if a certificate of good title could not be issued in respect of a property, there would be no need to apply for a first registration of the property	Administration to provide the required information under paragraph 4(c) of the minutes
003753-003942	Chairman	Typographical errors in paragraphs 6(a) and 6(b) of the paper on “The Conversion Mechanism — Supplementary Information” (LC Paper No. CB(1)1986/02-03(02)) (Revised version of the paper tabled at the meeting and issued vide LC Paper No. CB(1)2043/02-03 on 20 June 2003)	
003943-004718	Administration	Briefing by the Administration on paragraphs 1 to 6 of the paper on “The Conversion Mechanism — Supplementary Information” (LC Paper No. CB(1)1986/02-03(02))	

Time marker	Speaker	Subject(s)	Action Required
004719-011400	Chairman Ms Audrey EU Mr TAM Yiu-chung Assistant Legal Adviser 6 Administration	<p>(a) Change(s) in the application of the doctrine of notice in relation to the enforceability of unregistered equitable interests under the proposed LTRS and the implications thereof (paragraph 6 of LC Paper No. CB(1)1986/02-03(02) and clauses 14(2)(d), 21, 22, 23 and 25)</p> <p>(b) Steps to be taken for registration of unregistered equitable interests before and after enactment of the Bill (clause 70(3))</p> <p>(c) How unregistered equitable interests could seek registration under the proposed LTRS should there be a change in the entitlement to a property as a result of divorce (clause 68)</p>	Administration and ALA6 to provide the required information under paragraphs 4(a) and 5 of the minutes respectively
011401-011504	Administration	Briefing by the Administration on paragraphs 7 to 11 of the paper on “The Conversion Mechanism — Supplementary Information” (LC Paper No. CB(1)1986/02-03(02))	
011505-011908	Chairman Ms Audrey EU Assistant Legal Adviser 6 Administration	Elaboration on the definition of “land” in clause 12(4)	

Time marker	Speaker	Subject(s)	Action Required
011909-012017	Assistant Legal Adviser 6	Need to examine how the English version of “首次轉讓” (first assignment) in the Bill could be revised to reflect the meaning of the Chinese version	Administration to provide the required information under paragraph 4(d) of the minutes
012018-012152	Administration	Briefing by the Administration on paragraphs 12 and 13 of the paper on “The Conversion Mechanism — Supplementary Information” (LC Paper No. CB(1)1986/02-03(02))	
012153-012334	Chairman Assistant Legal Adviser 6 Administration	Different easements, rights or covenants provided for in the deed of mutual covenant (DMC) that would be registered from the date of registration of the DMC (clause 51)	Administration to provide the required information under paragraph 4(b)(i) of the minutes
012335-012900	Chairman Ms Audrey EU Administration	Clarifications on the details of clause 51, in particular, the purpose of clause 51(4) and whether the registration of a DMC would effect the registration of only those easements, rights or covenants provided for in the deed which would affect the registered land or the registered long term lease the subject of the deed	Administration to provide the required information under paragraph 4(b)(ii) of the minutes

Part B: Discussion on the administrative arrangements of the proposed new system

Time marker	Speaker	Subject(s)	Action Required
012901-013028	Chairman	Inviting members' views on the paper on "Title Certificates, Searches and Instruments" (LC Paper No. CB(1)1986/02-03(03))	
013029-013513	Chairman Mr IP Kwok-him Administration	(a) Whether upon registration of title under the proposed LTRS the property owner concerned could keep the original title deed (b) Provision of the hard copy of the title certificate on application by the owner of registered land or the lessee of a registered long term lease (clause 26)	
013514-013527	Chairman	Inviting members' views on the paper on "Dispositions, Transmissions and Trusts" (LC Paper No. CB(1)1986/02-03(04))	
013528-013834	Chairman Assistant Legal Adviser 6 Administration	(a) Whether the Bill reflected the policy that any disposition of registered land would without exception only have legal effect when it was registered	Administration to provide the required information under paragraph 4(e)(i) of the minutes

Time marker	Speaker	Subject(s)	Action Required
		(b) Whether clause 29(1) needed to be amended to the effect that for the purpose of creating, extinguishing, transferring, varying or affecting any interest in or over registered land or a registered long term lease the disposition of which was not required to be registered under the Bill, no registration was necessary to effect such creation, extinguishment, transfer, variation or affection	Administration to provide the required information under paragraph 4(e)(ii) of the minutes
013835-014026	Chairman Administration	(a) Date and arrangements for next meeting (b) Papers to be provided by the Administration for the Bills Committee's consideration by the end of July 2003	